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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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IN THE MATTER OF THE
INVESTIGATION OF THE COST OF
TELECOMMUNICATIONS ACCESS

DOCKET NO. T-00000D-00-0672

REPLY IN SUPPORT OF
AT&T'S MOTION
TO COMPEL

AT&T of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") hereby
reply to Qwest Corporation's Response to AT&T's Motion to Compel.

I. INTRODUCTION

Qwest Corporation ("Qwest") seeks to limit the scope of the proceeding. It claims that the proceeding is limited to the cost of access; Qwest is mistaken. Limiting the scope of the access proceeding as suggested by Qwest would amend the terms of a prior Procedural Order without due process to the other parties and would be contrary to the express wishes of the Commission.

II. ARGUMENTS

A. The Scope of the Proceeding

As noted in AT&T's Motion, AT&T raised the price squeeze issue in the Qwest Section 271 case. The Commission referred this issue to this proceeding. The Commission's directive should be sufficient. However, there is an earlier Procedural Order that makes the price squeeze issue a legitimate one.

On May 21, 2002, the Administrative Law Judge ("ALJ") released a Procedural Order that adopted Staff's recommendations on the scope of the proceeding. Staff recommended that the parties be required to file testimony on "[w]hether IXCs may be at a competitive disadvantage if access charges are not reformed." A price squeeze is a competitive disadvantage that the IXCs currently face, and the issue falls well within the scope of Staff's recommendation.

Qwest argues that AT&T should not be permitted to expand the scope of the proceeding to include the price squeeze issue simply by offering testimony on the issue. Qwest Response at 4. Once again, the May 21, 2002, Procedural Order provides support for AT&T's testimony. Staff's recommendation required parties to file testimony on "any other issues they believe are relevant." Therefore, the price squeeze issue falls squarely within two areas addressed in Staff's recommendations adopted by the Procedural Order.

B. Qwest's Affiliates

Qwest objects to having to provide information regarding affiliates. It is interesting to note that Qwest cites rules that require disclosure of information in its possession or available to it. Qwest Response at 4. A careful reading of Qwest's Response reflects that

Qwest has not stated that the information is not in its possession or available to it. Qwest has stated that the information is held and controlled by its affiliates.¹ *Id.*, at 4. But this is not the same thing. If Qwest has the information in its possession or if it is available, Qwest must produce it.²

Furthermore, one cannot ignore the fact that it is Qwest that provides the intraLATA toll service. The data requested regarding intraLATA service is definitely in Qwest's possession. Qwest simply ignores this fact. AT&T is not aware that Qwest Corporation obtained authority to discontinue providing intraLATA service, or obtained permission to provide intraLATA service through an affiliate. As for interLATA toll service, Qwest is jointly marketing the service with the affiliates. However, Qwest Communications Corporation d/b/a Qwest Long Distance and Qwest LD Corporation d/b/a Qwest Long Distance did not receive certificates of convenience and necessity until December 4, 2003, (Decision Nos. 66612 and 66613, respectively). If Qwest is jointly marketing the service, separately or in bundles, it must verify that the service passes the imputation test contained in R14-2-1310. All of the cost data, therefore, should be in the possession or control of Qwest.

Qwest has not explained why cost data for intraLATA services, services it has provided since divestiture, are not in its possession and control. Nor can it. Qwest's attempt to hide behind its affiliates is a sham. Regardless, since Qwest provides the intraLATA toll service, and markets interLATA service, the Commission is legally entitled to the cost information and documents that justify the rates it charges for intraLATA service. If Qwest's

¹ Qwest fails to name those affiliates.

² Furthermore, the law recognizes joint possession. Whether the information is not presently in Qwest's actual, physical possession is irrelevant. This issue is whether Qwest has a right to obtain possession. Since Qwest jointly markets or will market its affiliates' interLATA services, separately and in bundles with its own services, it is reasonable to presume that Qwest has joint possession of the information that identifies the cost to provide the service. Otherwise, Qwest would not know if the imputation test in R14-2-1310 has been met.

position were accepted, the Commission would not have access to the cost information to determine if Qwest's toll rates are reasonable or pass the imputation test. This outcome is plainly unreasonable.

C. Unduly Burdensome

Qwest continues to maintain that a number of AT&T's requests are unduly burdensome or require a special study. As an initial matter, AT&T is willing to limit AT&T 01-002 and 01-017 to the last 3 years, the initial term of Qwest Price Cap Plan. This is more than reasonable.

Qwest has not explained why AT&T 01-020 is unduly burdensome. In fact, this information seeks to identify the affiliates and the services provided by these affiliates, the very companies Qwest claims have possession of the information. On the one hand, Qwest argues the information is in the possession of affiliates; on the other hand, it claims it is too burdensome to identify the affiliates, the services the affiliates provide, and the rates the affiliates pay.

AT&T 01-023 simply seeks copies of studies or reports or other documents on marketing costs. This does not appear unreasonable. AT&T is also willing to limit the scope of the request to the last 3 years.

AT&T 01-027 is limited to a period of two years. This is not unreasonable. AT&T is willing to limit verification of amounts paid to any reasonable manner, eliminating the requirement to provide "all" contracts, invoices or other documents. With this change, the data request is not burdensome.

AT&T 01-028 is also limited to a term of 2 years. This is reasonable. AT&T is willing to limit the supporting documentation to documents that reasonably support the

response, eliminating the need to provide "all" documents that support the response. Once again, the question is limited in scope and in not unreasonable.

Many of the arguments raised by Qwest's brief on the burdensomeness of the requests go to the issue of the scope of the proceeding, not the burdensomeness of the request. AT&T has explained why the costs of interexchange toll services are relevant, and it will not repeat those arguments here.

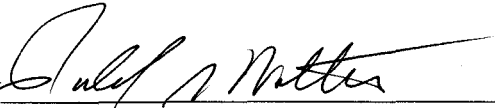
III. CONCLUSION

AT&T has provided sufficient justification to demonstrate why the price cap issue is within the scope of the case and how the requests relate to this issue. Furthermore, AT&T has explained why the information should be in Qwest's possession or available to it. Finally, to the extent Qwest may have had an argument that a portion of AT&T's requests may have been burdensome, AT&T has limited the scope of the requests to a reasonable period and reduced the substantiation obligations.

Accordingly, AT&T requests that its Motion to Compel be granted.

Submitted this 23rd day of December, 2003.

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(Docket No. T-00000D-00-0672)

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